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EXAMINER	
JABR, FADEY S	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/032,751	Applicant(s) VAIDYANATHAN ET AL.	
	Examiner Fadey S. Jabr	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Claim 9 has been amended. Claims 1-40 remain pending and are again presented for examination.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 March 2007 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1-40 have been considered but are moot in view of the new ground(s) of rejection.

3. Applicant argues that the prior art of record fails to teach or suggest paying a content owner a payment based on a retail price minus a reseller commission. Examiner notes that it has been held that payment schemes are not patentably distinct. For example, a system where a reseller inflates the price of a product above what the reseller paid the wholesaler is a price scheme that allows the reseller to generate a fee or commission, therefore implicitly paying the wholesaler the retail price and the reseller their commission for selling the product. Another

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example would be an electronic auction website which collects a transaction fee from the seller for each item a buyer purchases. Further, in a business environment, compensating (i.e. commission) an entity for providing a service (i.e. selling a company's product) is old and well known.

Examiner also notes in the broadest reasonable interpretation a retail price is a selling price. Therefore, Vestergaard's teaching of compensating a distributor (i.e. reseller) a percentage of gross receipts, where the content owner receives the remaining portion of the gross receipts is functionally equivalent to paying a content owner the remainder of the selling price once the reseller removes his commission portion.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims **1, 3-7, 10-12, 14-18** and **21-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna et al., U.S. Patent No. 6,587,837 B1 in view of Vestergaard et al., Pub. No. US2002/0146122 A1 and Likourezos et al., Pub. No. 2007/0005432 A1, hereinafter referred to as Spagna, Vestergaard and Likourezos, respectively.

As per **Claims 1 and 12**, Spagna discloses a method and system for delivering electronic content from an online store comprising:

- allowing a content owner to post a file on the marketplace for access by users by,
 - providing information about the file
(C. 53, line 41- C. 55, line 62, C. 58, lines 2-9, also see Figure 6);
 - setting a retail price that users will be charged for downloading the file
(C. 12, lines 52-56, C. 62, lines 48-49, C. 79, lines 60-64); and
- allowing a first user to search for files posted on the digital marketplace for one to resell on a third party website
(C. 13, lines 13-37, C. 71, lines 22-44, C. 73, lines 46-60, C. 76, lines 34-38);
- allowing a second user to search for files posted on the digital marketplace for one to download (C. 75, lines 34-37);
- if the second user selects a particular file to download, charging the user the retail price set for the file (C. 62, lines 58-59).

Spagna fails to disclose *setting a reseller commission; if the second user downloads the particular file from the third party website, paying the first user the reseller commission set for the file; and paying the content owner a payment based on the retail price minus the reseller commission*. Spagna however does disclose content providers may exploit their rights directly or license content to the electronic digital content store or intermediate market partners usually in return for content usage payments related to electronic commerce revenues (C. 12, lines 24-33). Moreover, Vestergaard teaches allowing a content owner to stipulate the amount of compensation a distributor (i.e. reseller) will receive for selling the content owner's products.

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The compensation can be a percentage of the gross receipts or based on a flat rate (0152).

Furthermore, Likourezos teaches a payment website management system pays the seller by direct deposit an amount equal to the charged amount minus a commission and a transaction fee. The commission typically paid to the operator or owner of the electronic auction website and the transaction fee is paid to the operator or owner of the payment website (0010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing a content owner to specify the amount of compensation that the distributor will receive if they sell their content and when the content is sold pay the content owner an amount equal to the charged amount minus the distributor's compensation and any ancillary fees as taught by Vestergaard and Likourezos, because it allows the content owner to determine the amount of revenue they are willing to receive for assistance in selling their product while also compensating the distributor for their assistance, as would be apparent in any typical business environment.

As per **Claims 3 and 14**, Spagna fails to disclose generating revenue for the digital marketplace by subtracting a transaction fee from the payment made to the content owner. However, Likourezos teaches a payment website management system pays the seller by direct deposit an amount equal to the charged amount minus a commission and a transaction fee. The commission typically paid to the operator or owner of the electronic auction website and the transaction fee is paid to the operator or owner of the payment website (0010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include subtracting any transaction fees owed by

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the seller to any third party before sending the final payment to the content owner as taught by Likourezos, because it allows the seller to efficiently and quickly receive compensation for their assistance in selling the content owner's item while decreasing the amount of transactions between all parties of interest.

As per **Claims 4 and 15**, Spagna fails to disclose allowing the content owner to set the retail price and the reseller commission both positively and negatively. However, Vestergaard discloses compensating the distributor a percentage of the gross revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing the content owner to modify the percentage of the gross revenue the distributor receives as taught by Vestergaard, because it provides the content owner the flexibility in adjusting the amount of revenue the content owner decides to retain for themselves.

As per **Claims 5 and 16**, Spagna discloses purchase price, pay-per-listen price, copy authorization and target device types, or timed-availability restrictions, subscription services (C. 13, lines 34-37, C. 15, lines 39-43). Spagna fails to disclose a publisher-sponsored download. However, Vestergaard teaches three pricing models in which the digital files can be distributed through: a free model, a Pay model and finally a Sponsored model (0058). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of well known business models for selling content as taught by Vestergaard, because it provides the content owners a

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great deal of flexibility in determining which financial model to choose in order to maximize profit.

As per Claims 6 and 17, Spagna discloses the requesting the first user to enter display options for the search (C. 76, lines 34-38).

As per Claims 7 and 18, Spagna discloses searching for files (C. 76, lines 34-38). Spagna fails to disclose where the display options are free files, pay-per download files, or files listed as resalable. However, Spagna discloses a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Moreover, Vestergaard discloses a several different pricing options, one being a free file pricing model (0058). Vestergaard also discloses displaying to the user whether the digital file is free or not (0108). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of pricing options as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

As per Claims 10-11 and 21-22, Spagna discloses implementing the marketplace as a website on a network (C. 13, lines 21-22). Spagna fails to disclose implementing the digital marketplace as a peer-to-peer network. However, Vestergaard teaches implementing the marketplace as a website o a peer-to-peer network (0042-0043). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the

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method and system of Spagna and disclose implementing the marketplace as a website or a p2p network as taught by Vestergaard, because it allows the marketplace use the resources of the peers to distribute the content being sold.

6. Claims 2, 13, 23-27, 30-32 and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna in view of Vestergaard, Likourezos and Eaglen et al., Pub. No. US2003/0023505 A1.

As per **Claims 23-24 and 33-34**, Spagna discloses a method and system for delivering electronic content from an online store comprising:

- allowing a content owner to post a file on the marketplace for access by users by,
 - providing information about the file
(C. 53, line 41- C. 55, line 62, C. 58, lines 2-9, also see Figure 6);
 - setting a retail price that users will be charged for downloading the file
(C. 12, lines 52-56, C. 62, lines 48-49, C. 79, lines 60-64); and
- allowing a first user to search for files posted on the digital marketplace for one to resell on a third party website
(C. 13, lines 13-37, C. 71, lines 22-44, C. 73, lines 46-60, C. 76, lines 34-38);
- allowing a second user to search for files posted on the digital marketplace for one to download (C. 75, lines 34-37);
- if the second user selects a particular file to download, charging the user the retail price set for the file (C. 62, lines 58-59).

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Spagna fails to disclose *setting a reseller commission; if the second user downloads the particular file from the third party website, paying the first user the reseller commission set for the file; and paying the content owner a payment based on the retail price minus the reseller commission*. Spagna however does disclose content providers may exploit their rights directly or license content to the electronic digital content store or intermediate market partners usually in return for content usage payments related to electronic commerce revenues (C. 12, lines 24-33). Moreover, Vestergaard teaches allowing a content owner to stipulate the amount of compensation a distributor (i.e. reseller) will receive for selling the content owner's products. The compensation can be a percentage of the gross receipts or based on a flat rate (0152). Furthermore, Likourezos teaches a payment website management system pays the seller by direct deposit an amount equal to the charged amount minus a commission and a transaction fee. The commission typically paid to the operator or owner of the electronic auction website and the transaction fee is paid to the operator or owner of the payment website (0010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing a content owner to specify the amount of compensation that the distributor will receive if they sell their content and when the content is sold pay the content owner an amount equal to the charged amount minus the distributor's compensation and any ancillary fees as taught by Vestergaard and Likourezos, because it allows the content owner to determine the amount of revenue they are willing to receive for assistance in selling their product while also compensating the distributor for their assistance, as would be apparent in any typical business environment.

Spagna fails to disclose that the content owner edits the file information and to change

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the retail price and the reseller commission in real-time. However, Eaglen teaches a dynamic pricing technique which changes the price of a product depending on its demand (0007-0009, 0064, 0083). Vestergaard also discloses compensating the distributor a percentage of the gross revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include changing the price of a product dynamically based on the demand for the product as taught by Eaglen et al, where the change in price also changes the distributor compensation. Eaglen provides motivation by stating the price is adjusted based on demand for the item so as to maximize profit (0083).

As per **Claims 2 and 13**, Spagna fails to disclose allowing the content owner to monitor download statistics for the file the content owner posted and to change the retail price and the reseller commission for the file in real-time. However, Eaglen teaches a dynamic pricing technique which changes the price of a product depending on its demand (0007-0009, 0064, 0083). Vestergaard also discloses compensating the distributor a percentage of the gross revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include changing the price of a product dynamically based on the demand for the product as taught by Eaglen et al, where the change in price also changes the distributor compensation. Eaglen provides motivation by stating the price is adjusted based on demand for the item so as to maximize profit (0083).

As per **Claims 25, 30 and 35**, Spagna discloses purchase price, pay-per-listen price, copy authorization and target device types, or timed-availability restrictions, subscription services (C. 13, lines 34-37, C. 15, lines 39-43). Spagna fails to disclose a donation and an infomercial download. However, Vestergaard teaches three pricing models in which the digital files can be distributed through: a free model, a Pay model and finally a Sponsored model (0058). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of well known business models for selling content as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

As per **Claims 26 and 36**, Spagna discloses the requesting the first user to enter display options for the search (C. 76, lines 34-38).

As per **Claims 27 and 37**, Spagna discloses searching for files (C. 76, lines 34-38). Spagna fails to disclose where the display options are free files, pay-per download files, or files listed as resalable. However, Spagna discloses a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Moreover, Vestergaard discloses a several different pricing options, one being a free file pricing model (0058). Vestergaard also discloses displaying to the user whether the digital file is free or not (0108). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of

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pricing options as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

As per **Claims 31-32**, Spagna discloses implementing the marketplace as a website on a network (C. 13, lines 21-22). Spagna fails to disclose implementing the digital marketplace as a peer-to-peer network. However, Vestergaard teaches implementing the marketplace as a website on a peer-to-peer network (0042-0043). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and disclose implementing the marketplace as a website or a p2p network as taught by Vestergaard, because it allows the marketplace use the resources of the peers to distribute the content being sold.

7. Claims **8-9 and 19-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna in view of Vestergaard and Likourezos as applied to claims 1 and 12 above, and further in view of Ferguson et al., U.S. Patent No. 5,819,092.

As per **Claims 8-9 and 19-20**, Spagna fails to disclose requesting the first user to enter sorting options for the search, including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission. Spagna does disclose sorting options which allow a user to sort by artist, category, label, other (C. 94, line 2). Moreover, Ferguson teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc., which later can be executed, viewed, printed, or

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filed (C. 10, line 62-C. 11, line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing a user to search and retrieve files according to certain file attributes as taught by Ferguson, because it allows for quick search through large collections of files (C. 10, lines 64-65).

8. Claims **28-29** and **38-40** are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna in view of Vestergaard, Likourezos and Eaglen as applied to claims 23 and 33 above, and further in view of Ferguson.

As per **Claims 28-29 and 38-39**, Spagna fails to disclose requesting the first user to enter sorting options for the search, including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission. Spagna does disclose sorting options which allow a user to sort by artist, category, label, other (C. 94, line 2). Moreover, Ferguson teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc., which later can be executed, viewed, printed, or filed (C. 10, line 62-C. 11, line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing a user to search and retrieve files according to certain file attributes as taught by Ferguson, because it allows for quick search through large collections of files (C. 10, lines 64-65).

As per **Claim 40**, Spagna discloses purchase price, pay-per-listen price, copy authorization and target device types, or timed-availability restrictions, subscription services (C. 13, lines 34-37, C. 15, lines 39-43). Spagna fails to disclose a donation and an infomercial download. However, Vestergaard teaches three pricing models in which the digital files can be distributed through: a free model, a Pay model and finally a Sponsored model (0058). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of well known business models for selling content as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

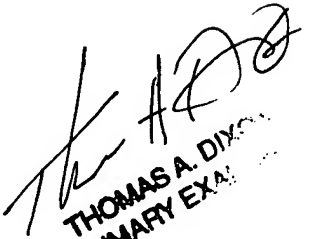
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadey S. Jabr whose telephone number is (571) 272-1516. The examiner can normally be reached on Mon. - Fri. 7:30am to 4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Fadey S Jabr
Examiner
Art Unit 3628


THOMAS A. DIXON
PRIMARY EXAMINER

FSJ

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